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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHARLES MEUBUS, SYLVAIN JODOIN,
and ALAN BERNARDI

Appeal 2009-014869
Application 09/401,521
Technology Center 2600

Before MAHSHID D. SAADAT, MARC S. HOFF,
and CARLA M. KRIVAK, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the final rejection of claims 21-37, 39-43, 45-48, and 50-61. Claims 1-20, 38, and 44 have been canceled and claim 49 has been indicated as allowable. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

STATEMENT OF THE CASE

Introduction

Appellants' invention relates to methods, systems, and computer program products for interconnecting network equipment with telecommunications systems (see Spec. 3:30-34).

Exemplary independent claims 21 and 36 read as follows:

21. In a switched telephone network, comprising:
- a plurality of telephony switches interconnected in a switched traffic carrying network for carrying telephone call traffic and an associated signaling network for carrying signaling information relevant to the establishment of call paths on said traffic carrying network;
 - a method of processing an incoming call directed to a specified subscriber telephone line on said traffic carrying network, said specified subscriber telephone line initially in-use to connect a data terminal to a data network, said method comprising:
 - a. receiving a signaling message from said signaling network generated in response to said incoming call, said received signaling message received prior to establishment of a call path for said incoming call on said traffic carrying network;
 - c. in response to said received signaling message, dispatching a first data message indicative of said incoming call to said data terminal on said data network by way of said traffic carrying network and said specified subscriber telephone line.
36. A service control point (SCP) for use in an advanced intelligent network (AIN) forming part of a switched telephone network, said SCP configured to dispatch a signaling message to a data network gateway interconnected to a data network, in response to receiving an AIN signal indicative of an incoming call to a specified telephone subscriber line in-use to connect a data terminal to said data network.

Rejections

The Examiner relies on the following prior art in rejecting the claims:

Wheeler, Jr.	US 5,572,583	Nov. 5, 1996
(hereinafter, Wheeler)		
Norris	US 5,805,587	Sep. 8, 1998

Claims 21-31 and 33-35 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Norris.

Claims 32, 36, 37, 39-43, 45-48, and 50-61 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Norris and Wheeler.

PRINCIPLES OF LAW

Section 103 forbids issuance of a patent when “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.”

KSR Int'l. Co. v. Teleflex Inc., 550 U.S. 398, 406 (2007).

A step in the obviousness analysis is to “determine whether there was an apparent reason to combine the known elements in the fashion claimed.” *Id.* at 418. A rejection for obviousness must include “articulated reasoning with some rational underpinning to support the legal conclusion.” *Id.*, quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). The proper question to ask is whether a person of ordinary skill in the art would have seen a benefit to combining the prior art teachings. *KSR*, 550 U.S. at 424.

ANALYSIS

35 U.S.C. § 102 Rejection over Norris

With respect to claim 21, Appellants contend that Norris does not support a finding of anticipation because the cited portions of the reference indicate that, instead of receiving a signaling message prior to establishment of a call path for an incoming call, these two events are contemporaneous (App. Br. 6-7). Appellants specifically assert that Norris, in column 1, lines 41-57, discloses that a call “may be forwarded via the public switched network to a services platform” which establishes a connection, and then notifies the subscriber (App. Br. 8). Additionally, Appellants contend that, based on the cited portions in columns 5 and 6 of Norris, it is “ambiguous about when signaling messages arrive in relation to call path establishment” (App. Br. 9).

We agree with Appellants’ argument (Reply Br. 2) that Norris does not clearly explain when the signaling messages are received. While the Examiner responds (Ans. 14) that a call path is a two-way voice call path which is different from a signaling path, the cited portions of Norris include no discussion of the order in which the signaling message is received and the call path is established. Figure 3 of Norris depicts a re-routed call forwarded to the Internet Access Service (IAS) 200 over the communications path 150-10 via an idle B channel wherein the signaling is transmitted over an associated D channel (see col. 5, l. 66 – col. 6, l. 9). As such, Norris discloses that two different channels are provided for the signaling message and the re-routed call, which indicates using two different channels, but not a particular sequence, i.e., receiving signaling message prior to establishing a call path, as recited in the claim.

Therefore, we do not sustain the anticipation rejection of independent claim 21, of independent claim 29 which includes features similar to those recited in claim 21, or of claims 22-28, 30, 31 and 33-35 dependent therefrom.

35 U.S.C. § 103 Rejection over Norris and Wheeler

We also disagree with the Examiner (Ans. 16-18) that it would have been obvious to one of ordinary skill in the art to modify the network of Norris to include an advanced intelligent network (AIN) where a data terminal is connected to the data network in response to receiving an AIN signal indicative of an incoming call, as recited in claim 36. While Wheeler discloses making AIN services available in the network (col. 5, ll. 36-53), the Examiner has not provided a convincing rationale for modifying Norris by including an AIN to arrive at the claimed invention. In Appellants' view (App. Br. 14), general suggestions in Norris and Wheeler for using other networks is not sufficient to provide a valid line of reasoning establishing why an ordinarily skilled artisan would look to the AIN of Wheeler for a combination with the call waiting system of Norris.

Additionally, as specified by Appellants (App. Br. 15-16), we find no teaching or suggestion of dispatching a signaling message to a data network gateway and *in response* to receiving an AIN signal indicative of an incoming call, connecting a data terminal to the data network, as recited in independent claims 36, 37, 40, 50, and 51, let alone any suggestion that such feature could be used in the call waiting system of Norris. Further, we simply find no convincing rationale provided by the Examiner as to why the skilled artisan would look to the AIN service of Wheeler to improve or solve any problems associated with call waiting system of Norris. We agree with

Appellants (Reply Br. 2-3) that the Examiner's proffered generalized rationale (Ans. 9) that "Norris suggest [sic] the use of other public switched networks (i.e., AT&T Fig. 1) in his ISDN system" does not rise to the level of an articulated line of reasoning with a rational underpinning to support the legal conclusion of obviousness. *See KSR*, 550 U.S., at 418.

Given the above discussed deficiencies in the applied prior art, we fail to see how and in what manner the disclosure of Norris might have been modified by Wheeler to arrive at the features set forth in each of the appealed independent claims 36, 37, 40, 50, and 51. In our view, given the disparity of the problems addressed by the applied prior art references, and the differing solutions proposed by them, any attempt to combine them in the manner proposed by the Examiner could only come from Appellants' own disclosure using hindsight reconstruction.

In view of the above discussion, since we are of the opinion that the proposed combination of references set forth by the Examiner does not support the obviousness rejection, we do not sustain the rejection of independent claims 36, 37, 40, 50, and 51, nor of claims 39, 41-48, 51-55, and 57-61 dependent thereon.

CONCLUSION

Based on the analysis above, we conclude that the Examiner erred in rejecting claims 21-31 and 33-35 for anticipation under 35 U.S.C. § 102(e) and claims 32, 36, 37, 39-43, 45-48, and 50-61 for obviousness under 35 U.S.C. § 103(a).

DECISION

The decision of the Examiner rejecting claims 21-37, 39-43, 45-48, and 50-61 is reversed.

REVERSED

ELD